garded as having received the money by his agent when it was paid to the defendant, and was chargeable with the money and with the legal consequences of receiving it, as soon as it came to the hands of his attorney, whether the attorney ever paid it over to his principal or not. It may be that Deforest has some legal defence to the action. It is certain that he is better acquainted than another person with the state of his accounts with the plaintiff.

The defendant had no individuality in the matter. It was merged in that of the principal. The defendant could not interplead the claimants. (*Cooper* v. *Tastet*, 1 Tamlyn, 177, 5 Madd. Ch. R. 47, Story Eq. Pl. sec. 296. He could neither decide the matter for his principal, nor ask the Court to decide it for him.

The referee was therefore right in his report, and the judgment entered therein must be affirmed.

Judgment of referee affirmed.

Court of Common Pleas of Philadelphia County, August, 1852.

M'GLENSEY VS. COX.

1. The purchaser of the interest of one of several partners has no right to interfere personally in the affairs of the partnership, and a refusal of the remaining partners to permit him to do so will not entitle him to the interference of a Court of Equity by injunction, or the appointment of a receiver.
2. A provision in partnership articles that neither of the partners should sell or assign his interest without consulting the other parties, and giving them the preference, does not by implication authorize the introduction of a stranger into the firm by one of the partners, on a refusal by the rest to purchase his share.

This was a motion for an injunction and receiver upon bill filed. The facts sufficiently appear in the opinion of the Court.

THOMPSON, P. J.—The bill filed in this case alleges that Andrew B. Hirst, Charles D. Cox and James B. Smith entered into partnership for the purpose of carrying on the business of the City Hotel, on the 29th day of January, 1852; that the said Hirst on the 16th of July, 1852, having first offered to sell his share or interest in the partnership to his co-partners, upon

their declining to purchase, sold his said interest to the complainant, that since the said sale to complainant, the said Cox and Smith have advertised a dissolution of the partnership, and that they are still in possession of the partnership property, and are endeavoring to collect the debts due the firm; and further, that they refuse to make any equitable division or settlement with said complainant.

Upon these charges, the bill prays for an account, and injunction to restrain said respondents from collecting or receiving any partnership debts or moneys, and for the appointment of a receiver.

The affidavit read in support of the motion for the injunction, and for the appointment of a receiver, goes further than the bill, and alleges mismanagement of the partnership affairs and property by the respondents. Upon the hearing of the motion, the respondents presented counter affidavits, by which the charges contained in the bill, of their refusal to account and to make an equitable settlement, as well as the allegation of mismanagement contained in the complainant's affidavit, are fully and positively denied. The respondents further show by their affidavits, that they requested the complainant to unite with them in taking an account of the partnership affairs, and that upon his refusal to do so, they are now proceeding to ascertain the value of the assets of the partnership for the purpose of adjusting and settling the interests of the respective parties.

Upon the case, therefore, as presented upon the affidavits of the respective parties, the complainant is not entitled to an injunction. All the allegations made by the complainant are fully responded to, and his equity denied.

But it is insisted by the complainant, that inasmuch as he is a purchaser of the interest of Hirst, one of the partners, he is entitled, upon the dissolution which has taken place, to have a receiver appointed as a matter of course, even though all improper conduct on the part of the respondents has been denied, or did not in fact exist.

It is not necessary to consider in this case, whether a partner who by his own act dissolves the partnership before the expiration

of the term fixed for its continuance, can claim to have a receiver appointed, without alleging a breach of duty or of the partnership contract on the part of his co-partner, as the complainant does not claim to come into the firm as a partner, nor does his assignor, Hirst, appear in any way a party to the suit.

The ground assumed by the complainant is, that the partnership having been dissolved, whether by the sale to him or by the notice given by the respondents subsequent to said sale, it matters not which, it is the ordinary case of a dissolved partnership, and that he, as the party in interest, is entitled to have an injunction and a receiver as a matter of course.

Whatever may be the rights of a partner upon the dissolution, it is clear that he cannot transfer to a stranger his interest in the partnership, and thereby introduce him into the concern as a partner, (*Mason* v. *Connel*, 1 Whar. 381; *Cochran* v. *Perry*, 8 W. & S. 262; *Horton's Appeal*, 1 Harris, 67.) Can he, then, by a transfer convey to a stranger those rights which he possesses only because he is a partner? The stranger thus coming into the concern may be entitled to use appropriate means to ascertain the situation of the partnership; he may demand an account and perhaps an immediate settlement, but not being a partner, he has no right personally to interfere, and the refusal of the remaining partners to permit him to do so, is no sufficient reason for depriving them of any rights to which their position entitles them. The remaining partners, after a dissolution thus effected, are entitled to hold possession for the purpose of paying off the debts and winding up the assets of the firm, (1 Harris, 67); and in case *where no improper conduct is charged* in the complainant's bill, and where everything like mismanagement is fully refuted by the counter affidavits presented, and where it further appeared that the complainant has had further opportunity to investigate the situation of affairs, and to ascertain the value of the interest claimed by him, it would be a harsh exercise of the power of the Court to deprive parties of their rightful control over their own property, without some more efficient cause shown than appears in the present case.

The clause in the agreement by which the partnership was

formed, which provides that neither of the parties shall sell or assign his interest without consulting the other parties and giving them the preference to buy such interest, is not sufficiently indicative of an intention to authorize the introduction of a stranger into the firm, to overrule the well established law on that subject. Indeed the complainant nowhere alleges that he became a partner under the clause referred to. It may have been introduced as a provision for an earlier dissolution than the term mentioned in the agreement, but whatever effect the provision may have had between the parties themselves, it does not clearly appear to confer on the complainant those rights which would, in the present case, justify the Court in granting the present application.

The motion for an injunction and for the appointment of a receiver, is therefore refused.

C. Fallon for complainant; *Mallory, Bull* and *Sheppard, for* respondents.

RECENT ENGLISH CASES.

Sussex Summer Assizes, 1852.

REG. *v.* FRANCES MOORE.[1]

A party cannot be convicted of an attempt to commit Suicide, if, at the time of the act done, he was so drunk as not to know what he was about.

The prisoner was indicted for a misdemeanor, in attempting to commit suicide by throwing herself into a well. The only witness examined stated, that he lived in the same house with the prisoner and her husband; and, one evening, as they were quarrelling and beating each other, he in order to separate them, put the prisoner out of the house into the garden, where was a well, thirty-eight feet deep, with about four feet of water. The prisoner then exclaimed, that as she was thrust out of the house she would throw herself into the well. She accordingly did so, but help having been obtained, was taken out without much injury. The witness

[1] 16 Jur. 750.